

AMENDED IN SENATE JUNE 13, 2016  
AMENDED IN ASSEMBLY MAY 27, 2016  
AMENDED IN ASSEMBLY MAY 10, 2016  
AMENDED IN ASSEMBLY APRIL 13, 2016  
AMENDED IN ASSEMBLY MARCH 31, 2016  
AMENDED IN ASSEMBLY MARCH 17, 2016  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2591**

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**Introduced by Assembly Member Dababneh**  
**(Coauthors: Assembly Members Travis Allen, Cristina Garcia,**  
**O'Donnell, Olsen, and Wilk)**  
**(Coauthor: Senator Bates)**

February 19, 2016

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An act to repeal and amend Section 1633.3 of the Civil Code, and to amend and add Section 38.6 of, and to repeal Section 38.5 of, the Insurance Code, relating to insurance.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2591, as amended, Dababneh. Insurance: electronic transmission.

Existing law generally requires, with exceptions, that specified provisions of the Civil Code apply to electronic records and electronic signatures relating to a transaction.

This bill would remove various notices, including a policy cancellation notice by the named insured and a written notice of nonrenewal of the policy from the above exemptions, making those notices subject to the specified provisions of the Civil Code. The bill, commencing January

1, 2021, would reinstate certain exemptions of those notices from the specified provisions of the Civil Code.

Existing law generally requires that any required notice related to insurance transactions be made by mail. Existing law authorizes an insurer, under specified conditions, to provide by electronic transmission the required offer of renewal for automobile insurance, the required notice of conditional renewal for commercial insurance, the required offer of coverage or renewal or any disclosure required regarding earthquake insurance, and the offer of renewal for a workers' compensation policy.

The bill would, until January 1, 2021, for the above-specified records, authorize persons in addition to the insurer to send those records by electronic transmission by providing that an agent, broker, or any other person licensed by the Department of Insurance may send those records electronically, as specified. The bill, as of January 1, 2021, would no longer authorize the notice of conditional renewal for commercial insurance to be sent electronically.

Existing law prohibits an insurer, relating to any insurance on risks or on operations in this state, including reinsurance, life insurance, insurance of vessels or craft, title insurance, and disability insurance, from sending a written notice by electronic transmission.

This bill would repeal the above prohibition, thereby allowing an insurer, relating to any insurance on risks or on operations in this state, including reinsurance, life insurance, insurance of vessels or craft, title insurance, and disability insurance, to send a written notice by electronic transmission.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1633.3 of the Civil Code, as amended
- 2 by Section 1.5 of Chapter 638 of the Statutes of 2015, is repealed.
- 3 SEC. 2. Section 1633.3 of the Civil Code, as amended by
- 4 Section 2.5 of Chapter 638 of the Statutes of 2015, is amended to
- 5 read:
- 6 1633.3. (a) Except as otherwise provided in subdivisions (b)
- 7 and (c), this title applies to electronic records and electronic
- 8 signatures relating to a transaction.

1 (b) This title does not apply to transactions subject to the  
2 following laws:

3 (1) A law governing the creation and execution of wills, codicils,  
4 or testamentary trusts.

5 (2) Division 1 (commencing with Section 1101) of the Uniform  
6 Commercial Code, except Sections 1206 and 1306.

7 (3) Divisions 3 (commencing with Section 3101), 4  
8 (commencing with Section 4101), 5 (commencing with Section  
9 5101), 8 (commencing with Section 8101), 9 (commencing with  
10 Section 9101), and 11 (commencing with Section 11101) of the  
11 Uniform Commercial Code.

12 (4) A law that requires that specifically identifiable text or  
13 disclosures in a record or a portion of a record be separately signed,  
14 including initialed, from the record. However, this paragraph does  
15 not apply to Section 1677 or 1678 of this code or Section 1298 of  
16 the Code of Civil Procedure.

17 (c) This title does not apply to any specific transaction described  
18 in Section 17511.5 of the Business and Professions Code, Section  
19 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7,  
20 or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of  
21 Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14,  
22 1789.16, or 1793.23 of, Chapter 1 (commencing with Section  
23 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5,  
24 1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i,  
25 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section  
26 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section  
27 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981)  
28 or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of  
29 Division 3 of, Section 3071.5 of Part 5 (commencing with Section  
30 4000) of Division 4 of, or Part 5.3 (commencing with Section  
31 6500) of Division 4 of this code, subdivision (b) of Section 18608  
32 or Section 22328 of the Financial Code, Section 1358.15, 1365,  
33 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code,  
34 Section 786 as it applies to individual and group disability policies,  
35 10192.18, 10199.44, 10199.46, 10235.16, 10235.40, 11624.09, or  
36 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482  
37 of the Public Utilities Code, or Section 9975 or 11738 of the  
38 Vehicle Code. An electronic record may not be substituted for any  
39 notice that is required to be sent pursuant to Section 1162 of the  
40 Code of Civil Procedure. Nothing in this subdivision shall be

1 construed to prohibit the recordation of any document with a county  
2 recorder by electronic means.

3 (d) This title applies to an electronic record or electronic  
4 signature otherwise excluded from the application of this title under  
5 subdivision (b) when used for a transaction subject to a law other  
6 than those specified in subdivision (b).

7 (e) A transaction subject to this title is also subject to other  
8 applicable substantive law.

9 (f) The exclusion of a transaction from the application of this  
10 title under subdivision (b) or (c) shall be construed only to exclude  
11 the transaction from the application of this title, but shall not be  
12 construed to prohibit the transaction from being conducted by  
13 electronic means if the transaction may be conducted by electronic  
14 means under any other applicable law.

15 (g) Notwithstanding subdivisions (b) and (c), this title shall  
16 apply to electronic records and electronic signatures relating to  
17 transactions conducted by a person licensed, certified, or registered  
18 pursuant to the Alarm Company Act (Chapter 11.6 (commencing  
19 with Section 7590) of Division 3 of the Business and Professions  
20 Code) for purposes of activities authorized by Section 7599.54 of  
21 the Business and Professions Code.

22 (h) This section shall remain in effect only until January 1, 2021,  
23 and as of that date is repealed, unless a later enacted statute, that  
24 is enacted before January 1, 2021, deletes or extends that date.

25 SEC. 3. Section 1633.3 of the Civil Code, as added by Section  
26 3.5 of Chapter 638 of the Statutes of 2015, is amended to read:

27 1633.3. (a) Except as otherwise provided in subdivisions (b)  
28 and (c), this title applies to electronic records and electronic  
29 signatures relating to a transaction.

30 (b) This title does not apply to transactions subject to the  
31 following laws:

32 (1) A law governing the creation and execution of wills, codicils,  
33 or testamentary trusts.

34 (2) Division 1 (commencing with Section 1101) of the Uniform  
35 Commercial Code, except Sections 1206 and 1306.

36 (3) Divisions 3 (commencing with Section 3101), 4  
37 (commencing with Section 4101), 5 (commencing with Section  
38 5101), 8 (commencing with Section 8101), 9 (commencing with  
39 Section 9101), and 11 (commencing with Section 11101) of the  
40 Uniform Commercial Code.

1 (4) A law that requires that specifically identifiable text or  
2 disclosures in a record or a portion of a record be separately signed,  
3 including initialed, from the record. However, this paragraph does  
4 not apply to Section 1677 or 1678 of this code or Section 1298 of  
5 the Code of Civil Procedure.

6 (c) This title does not apply to any specific transaction described  
7 in Section 17511.5 of the Business and Professions Code, Section  
8 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7,  
9 or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of  
10 Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14,  
11 1789.16, or 1793.23 of, Chapter 1 (commencing with Section  
12 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5,  
13 1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i,  
14 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section  
15 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section  
16 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981)  
17 or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of  
18 Division 3 of, Section 3071.5 of Part 5 (commencing with Section  
19 4000) of Division 4 of, or Part 5.3 (commencing with Section  
20 6500) of Division 4 of this code, subdivision (b) of Section 18608  
21 or Section 22328 of the Financial Code, Section 1358.15, 1365,  
22 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code,  
23 Section 662, paragraph (2) of subdivision (a) of Section 663, 664,  
24 673, 677, 678.1, 786, paragraph (2) of subdivision (a) of Section  
25 10086, 10192.18, 10199.44, 10199.46, 10235.16, 10235.40,  
26 11624.09, or 11624.1 of the Insurance Code, Section 779.1,  
27 10010.1, or 16482 of the Public Utilities Code, or Section 9975  
28 or 11738 of the Vehicle Code. An electronic record may not be  
29 substituted for any notice that is required to be sent pursuant to  
30 Section 1162 of the Code of Civil Procedure. Nothing in this  
31 subdivision shall be construed to prohibit the recordation of any  
32 document with a county recorder by electronic means.

33 (d) This title applies to an electronic record or electronic  
34 signature otherwise excluded from the application of this title under  
35 subdivision (b) when used for a transaction subject to a law other  
36 than those specified in subdivision (b).

37 (e) A transaction subject to this title is also subject to other  
38 applicable substantive law.

39 (f) The exclusion of a transaction from the application of this  
40 title under subdivision (b) or (c) shall be construed only to exclude

1 the transaction from the application of this title, but shall not be  
2 construed to prohibit the transaction from being conducted by  
3 electronic means if the transaction may be conducted by electronic  
4 means under any other applicable law.

5 (g) Notwithstanding subdivisions (b) and (c), this title shall  
6 apply to electronic records and electronic signatures relating to  
7 transactions conducted by a person licensed, certified, or registered  
8 pursuant to the Alarm Company Act (Chapter 11.6 (commencing  
9 with Section 7590) of Division 3 of the Business and Professions  
10 Code) for purposes of activities authorized by Section 7599.54 of  
11 the Business and Professions Code.

12 (h) This section shall become operative on January 1, 2021.

13 SEC. 4. Section 38.5 of the Insurance Code, as amended by  
14 Section 4 of Chapter 369 of the Statutes of 2013, is repealed.

15 SEC. 5. Section 38.5 of the Insurance Code, as added by  
16 Section 5 of Chapter 369 of the Statutes of 2013, is repealed.

17 SEC. 6. Section 38.6 of the Insurance Code is amended to read:

18 38.6. (a) (1) Any written record required to be given or mailed  
19 to any person by a licensee, including an offer of renewal required  
20 by Sections 663 and 678, the notice of policy change or  
21 cancellation requested by the insured as required by Section 667.5,  
22 the notice of conditional renewal required by Section 678.1, the  
23 offer of coverage or renewal or any disclosure required by Section  
24 10086, the offer of renewal for a workers' compensation policy,  
25 Section 662, paragraph (2) of subdivision (a) of Section 663,  
26 Section 664, 667.5, 673, 677, paragraph (2) of subdivision (a) of  
27 Section 678, subdivisions (a) and (b) of Section 678.1, or any  
28 written record required to be given or mailed to any person by a  
29 licensee relating to the business of life insurance, as defined in  
30 Section 101 of this code may, if not excluded by subdivision (b)  
31 or (c) of Section 1633.3 of the Civil Code, be provided by  
32 electronic transmission pursuant to Title 2.5 (commencing with  
33 Section 1633.1) of Part 2 of Division 3 of the Civil Code, if each  
34 party has agreed to conduct the transaction by electronic means  
35 pursuant to Section 1633.5 of the Civil Code, and if the licensee  
36 complies with the provisions of this section. A valid electronic  
37 signature shall be sufficient for any provision of law requiring a  
38 written signature.

39 (2) For purposes of this section, the definitions set forth in  
40 Section 1633.2 of the Civil Code shall apply. The term "licensee"

1 means an insurer, agent, broker, or any other person who is required  
2 to be licensed by the department.

3 (3) Notwithstanding subdivision (I) of Section 1633.2 of the  
4 Civil Code, for purposes of this section, “person” includes, but is  
5 not limited to, the policy owner, policyholder, applicant, insured,  
6 or assignee or designee of an insured.

7 (b) In order to transmit a record listed in subdivision (a)  
8 electronically, a licensee shall comply with all of the following:

9 (1) A licensee, or licensee’s representative, acquires the consent  
10 of the person to opt in to receive the record by electronic  
11 transmission, and the person has not withdrawn that consent, prior  
12 to providing the record by electronic transmission. A person’s  
13 consent may be acquired verbally, in writing, or electronically. If  
14 consent is acquired verbally, the licensee shall confirm consent in  
15 writing or electronically. The licensee shall retain a record of the  
16 person’s consent to receive the record by electronic transmission  
17 with the policy information so that it is retrievable upon request  
18 by the department while the policy is in force and for five years  
19 thereafter.

20 (2) A licensee discloses, in writing or electronically, to the  
21 person all of the following:

22 (A) The opt in to receive the record by electronic transmission  
23 is voluntary.

24 (B) That the person may opt out of receiving the record by  
25 electronic transmission at any time, and the process or system for  
26 the person to opt out.

27 (C) A description of the record that the person will receive by  
28 electronic transmission.

29 (D) The process or system to report a change or correction in  
30 the person’s email address.

31 (E) The licensee’s contact information, which includes, but is  
32 not limited to, a toll-free number or the licensee’s Internet Web  
33 site address.

34 (3) The opt-in consent disclosure required by paragraph (2) may  
35 be set forth in the application or in a separate document that is part  
36 of the policy approved by the commissioner and shall be bolded  
37 or otherwise set forth in a conspicuous manner. The person’s  
38 signature shall be set forth immediately below the opt-in consent  
39 disclosure. If the licensee seeks consent at any time prior to the  
40 completion of the application, consent and signature shall be

1 obtained before the application is completed. If the person has not  
2 opted in at the time the application is completed, the licensee may  
3 receive the opt-in consent at any time thereafter, pursuant to the  
4 same opt-in requirements that apply at the time of the application.  
5 The licensee shall retain a copy of the signed opt-in consent  
6 disclosure with the policy information so that each is retrievable  
7 upon request by the department while the policy is in force and  
8 for five years thereafter.

9 (4) The email address of the person who has consented to  
10 electronic transmission shall be set forth on the consent disclosure.  
11 In addition, if the person who consented receives an annual  
12 statement, the email address of the person who has consented shall  
13 be set forth on that record.

14 (5) The licensee shall annually provide one free printed copy  
15 of any record described in this subdivision upon request by the  
16 person.

17 (6) If a provision of this code requires a licensee to transmit a  
18 record by first-class mail, regular mail, does not specify a method  
19 of delivery, or is a record that is required to be provided pursuant  
20 to Article 6.6 (commencing with Section 791), and if the licensee  
21 is not otherwise prohibited from transmitting the record  
22 electronically under subdivision (b) of Section 1633.8 of the Civil  
23 Code, then the record may be transmitted by electronic transmission  
24 if the licensee complies with all of the requirements of Sections  
25 1633.15 and 1633.16 of the Civil Code.

26 (7) Notwithstanding subdivision (b) of Section 1633.8 of the  
27 Civil Code, if a provision of this code requires a licensee to  
28 transmit a record by return receipt, registered mail, certified mail,  
29 signed written receipt of delivery, or other method of delivery  
30 evidencing actual receipt by the person, and if the licensee is not  
31 otherwise prohibited from transmitting the record electronically  
32 under Section 1633.3 of the Civil Code and the provisions of this  
33 section, then the licensee shall maintain a process or system that  
34 demonstrates proof of delivery and actual receipt of the record by  
35 the person consistent with this paragraph. The licensee shall  
36 document and retain information demonstrating delivery and actual  
37 receipt so that it is retrievable, upon request, by the department at  
38 least five years after the policy is no longer in force. The record  
39 provided by electronic transmission shall be treated as if actually  
40 received if the licensee delivers the record to the person in



1 compliance with applicable statutory delivery deadlines. A licensee  
2 may demonstrate actual delivery and receipt by any of the  
3 following:

4 (A) The person acknowledges receipt of the electronic  
5 transmission of the record by executing an electronic signature.

6 (B) The record is posted on the licensee's secure Internet Web  
7 site, and there is evidence demonstrating that the person logged  
8 onto the licensee's secure Internet Web site and downloaded,  
9 printed, or otherwise acknowledged receipt of the record.

10 (C) *The record is transmitted to the named insured through an*  
11 *application on a personal electronic device that is secured by*  
12 *password, biometric identifier, or other technology, and there is*  
13 *evidence demonstrating that the person logged into the application*  
14 *and viewed or otherwise acknowledged receipt of the record.*

15 ~~(C)~~

16 (D) If a licensee is unable to demonstrate actual delivery and  
17 receipt pursuant to this paragraph, the licensee shall resend the  
18 record by regular mail to the person in the manner originally  
19 specified by the underlying provision of this code.

20 (8) Notwithstanding any other law, a notice of lapse,  
21 nonrenewal, cancellation, or termination of any product subject to  
22 this section may be transmitted electronically if the licensee  
23 demonstrates proof of delivery as set forth in paragraph (7) and  
24 complies with the other provisions in this section.

25 (9) If the record is not delivered directly to the electronic address  
26 designated by the person but placed at an electronic address  
27 accessible to the person, a licensee shall notify the person in plain,  
28 clear, and conspicuous language at the electronic address  
29 designated by the person that describes the record, informs that  
30 person that it is available at another location, and provides  
31 instructions to the person as to how to obtain the record.

32 (10) (A) Upon a licensee receiving information indicating that  
33 the record sent by electronic transmission was not received by the  
34 person, the licensee shall, within five business days, comply with  
35 either clause (i) or (ii):

36 (i) Contact the person to confirm or update the person's email  
37 address and resend the record by electronic transmission. If the  
38 licensee elects to resend the record by electronic transmission, the  
39 licensee shall demonstrate the transmission was received by the  
40 person, pursuant to paragraph (6), (7), or (8). If the licensee is

1 unable to confirm or update the person's email address, the licensee  
2 shall resend the record by regular mail to the licensee at the address  
3 shown on the policy, or, if the underlying statute requires delivery  
4 in a specified manner, send the record in that specified manner.

5 (ii) Resend the record initially provided by electronic  
6 transmission by regular mail to the insured at the address shown  
7 on the policy, or, if the underlying statute requires delivery in a  
8 specified manner, send the record in that specified manner.

9 (B) If the licensee sends the first electronic record within the  
10 time period required by law and the licensee complies with both  
11 paragraph (5) and subparagraph (A) of this paragraph, the record  
12 sent pursuant to clause (i) or (ii) of subparagraph (A) shall be  
13 treated as if mailed in compliance with the applicable statutory  
14 regular mail delivery deadlines.

15 (11) The licensee shall not charge any person who declines to  
16 opt in to receive a record through electronic transmission from  
17 receiving a record electronically. The licensee shall not provide a  
18 discount or an incentive to any person to opt in to receive electronic  
19 records.

20 (12) The licensee shall verify a person's email address via paper  
21 writing sent by regular mail when more than 12 months have  
22 elapsed since the licensee's last electronic communication.

23 (c) An insurance agent or broker acting under the direction of  
24 a party that enters into a contract by means of an electronic record  
25 or electronic signature shall not be held liable for any deficiency  
26 in the electronic procedures agreed to by the parties under that  
27 contract if all of the following are met:

28 (1) The insurance agent or broker has not engaged in negligent,  
29 reckless, or intentional tortious conduct.

30 (2) The insurance agent or broker was not involved in the  
31 development or establishment of the electronic procedures.

32 (3) The insurance agent or broker did not deviate from the  
33 electronic procedures.

34 (d) (1) On or before January 1, 2019, the commissioner shall  
35 submit a report to the Governor and to the committees of the Senate  
36 and Assembly having jurisdiction over insurance and the judiciary,  
37 regarding the impact and implementation of the authorization of  
38 the electronic transmission of certain insurance renewal offers,  
39 notices, or disclosures, relating to the business of life insurance,  
40 as authorized by this section. The report shall include input from

1 insurers, consumers, and consumer organizations, and shall include  
2 an assessment of the department's experience pertaining to the  
3 authorization of the electronic transmission of insurance renewals,  
4 relating to the business of life insurance, as authorized by this  
5 section.

6 (2) On or before January 1, 2019, the commissioner shall submit  
7 a report to the Governor and to the committees of the Senate and  
8 Assembly having jurisdiction over insurance and the judiciary,  
9 regarding the impact and implementation of the authorization of  
10 the electronic transmission of certain insurance renewal offers,  
11 notices, or disclosures including an offer of renewal required by  
12 Sections 663 and 678, the notice of conditional renewal required  
13 by Section 678.1, the offer of coverage or renewal or any disclosure  
14 required by Section 10086, and the offer of renewal for a workers'  
15 compensation policy, as authorized by this section. The report  
16 shall include input from insurers, consumers, and consumer  
17 organizations, and shall include an assessment of the department's  
18 experience pertaining to the authorization of the electronic  
19 transmission of insurance renewals, including, an offer of renewal  
20 required by Sections 663 and 678, the notice of conditional renewal  
21 required by Section 678.1, the offer of coverage or renewal or any  
22 disclosure required by Section 10086, and the offer of renewal for  
23 a workers' compensation policy, as authorized by this section.

24 (e) Notwithstanding paragraph (4) of subdivision (b) of Section  
25 1633.3 of the Civil Code, for any policy of life insurance, as  
26 defined in Section 101, any statutory requirement for a separate  
27 acknowledgment, signature, or initial, which is not expressly  
28 prohibited by subdivision (c) of Section 1633.3 of the Civil Code,  
29 may be transacted using an electronic signature, or by electronic  
30 transaction, subject to all applicable provisions of this section.

31 (f) The department may suspend a licensee from providing  
32 records by electronic transmission if there is a pattern or practices  
33 that demonstrate the licensee has failed to comply with the  
34 requirements of this section. A licensee may appeal the suspension  
35 and resume its electronic transmission of records upon  
36 communication from the department that the changes the licensee  
37 made to its process or system to comply with the requirements of  
38 this section are satisfactory.

(g) This section shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

SEC. 7. Section 38.6 is added to the Insurance Code, to read:

38.6. (a) (1) Any written record required to be given or mailed to any person by a licensee, including an offer of renewal required by paragraph (1) of subdivision (a) of Section 663 and Section 678, the notice of policy change or cancellation requested by the insured as required by Section 667.5, the offer of coverage or renewal or any disclosure required by paragraph (1) of subdivision (a) of Section 10086, the offer of renewal for a workers' compensation policy, or any written record required to be given or mailed to any person by a licensee relating to the business of life insurance, as defined in Section 101 of this code may, if not excluded by subdivision (b) or (c) of Section 1633.3 of the Civil Code, be provided by electronic transmission pursuant to Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code, if each party has agreed to conduct the transaction by electronic means pursuant to Section 1633.5 of the Civil Code, and if the licensee complies with the provisions of this section. A valid electronic signature shall be sufficient for any provision of law requiring a written signature.

(2) For purposes of this section, the definitions set forth in Section 1633.2 of the Civil Code shall apply. The term "licensee" means an insurer, agent, broker, or any other person who is required to be licensed by the department.

(3) Notwithstanding subdivision (1) of Section 1633.2 of the Civil Code, for purposes of this section, "person" includes, but is not limited to, the policy owner, policyholder, applicant, insured, or assignee or designee of an insured.

(b) In order to transmit a record listed in subdivision (a) electronically, a licensee shall comply with all of the following:

(1) A licensee, or licensee's representative, acquires the consent of the person to opt in to receive the record by electronic transmission, and the person has not withdrawn that consent, prior to providing the record by electronic transmission. A person's consent may be acquired verbally, in writing, or electronically. If consent is acquired verbally, the licensee shall confirm consent in writing or electronically. The licensee shall retain a record of the person's consent to receive the record by electronic transmission

1 with the policy information so that it is retrievable upon request  
2 by the department while the policy is in force and for five years  
3 thereafter.

4 (2) A licensee discloses, in writing or electronically, to the  
5 person all of the following:

6 (A) The opt in to receive the record by electronic transmission  
7 is voluntary.

8 (B) That the person may opt out of receiving the record by  
9 electronic transmission at any time, and the process or system for  
10 the person to opt out.

11 (C) A description of the record that the person will receive by  
12 electronic transmission.

13 (D) The process or system to report a change or correction in  
14 the person's email address.

15 (E) The licensee's contact information, which includes, but is  
16 not limited to, a toll-free number or the licensee's Internet Web  
17 site address.

18 (3) The opt-in consent disclosure required by paragraph (2) may  
19 be set forth in the application or in a separate document that is part  
20 of the policy approved by the commissioner and shall be bolded  
21 or otherwise set forth in a conspicuous manner. The person's  
22 signature shall be set forth immediately below the opt-in consent  
23 disclosure. If the licensee seeks consent at any time prior to the  
24 completion of the application, consent and signature shall be  
25 obtained before the application is completed. If the person has not  
26 opted in at the time the application is completed, the licensee may  
27 receive the opt-in consent at any time thereafter, pursuant to the  
28 same opt-in requirements that apply at the time of the application.  
29 The licensee shall retain a copy of the signed opt-in consent  
30 disclosure with the policy information so that each is retrievable  
31 upon request by the department while the policy is in force and  
32 for five years thereafter.

33 (4) The email address of the person who has consented to  
34 electronic transmission shall be set forth on the consent disclosure.  
35 In addition, if the person who consented receives an annual  
36 statement, the email address of the person who has consented shall  
37 be set forth on that record.

38 (5) The licensee shall annually provide one free printed copy  
39 of any record described in this subdivision upon request by the  
40 person.

1 (6) If a provision of this code requires a licensee to transmit a  
2 record by first-class mail, regular mail, does not specify a method  
3 of delivery, or is a record that is required to be provided pursuant  
4 to Article 6.6 (commencing with Section 791), and if the licensee  
5 is not otherwise prohibited from transmitting the record  
6 electronically under subdivision (b) of Section 1633.8 of the Civil  
7 Code, then the record may be transmitted by electronic transmission  
8 if the licensee complies with all of the requirements of Sections  
9 1633.15 and 1633.16 of the Civil Code.

10 (7) If the record is not delivered directly to the electronic address  
11 designated by the person but placed at an electronic address  
12 accessible to the person, a licensee shall notify the person in plain,  
13 clear, and conspicuous language at the electronic address  
14 designated by the person that describes the record, informs that  
15 person that it is available at another location, and provides  
16 instructions to the person as to how to obtain the record.

17 (8) (A) Upon a licensee receiving information indicating that  
18 the record sent by electronic transmission was not received by the  
19 person, the licensee shall, within five business days, comply with  
20 either clause (i) or (ii):

21 (i) Contact the person to confirm or update the person's email  
22 address and resend the record by electronic transmission. If the  
23 licensee elects to resend the record by electronic transmission, the  
24 licensee shall demonstrate the transmission was received by the  
25 person, pursuant to paragraph (6). If the licensee is unable to  
26 confirm or update the person's email address, the licensee shall  
27 resend the record by regular mail to the licensee at the address  
28 shown on the policy, or, if the underlying statute requires delivery  
29 in a specified manner, send the record in that specified manner.

30 (ii) Resend the record initially provided by electronic  
31 transmission by regular mail to the insured at the address shown  
32 on the policy, or, if the underlying statute requires delivery in a  
33 specified manner, send the record in that specified manner.

34 (B) If the licensee sends the first electronic record within the  
35 time period required by law and the licensee complies with both  
36 paragraph (5) and subparagraph (A) of this paragraph, the record  
37 sent pursuant to clause (i) or (ii) of subparagraph (A) shall be  
38 treated as if mailed in compliance with the applicable statutory  
39 regular mail delivery deadlines.

1 (9) The licensee shall not charge any person who declines to  
2 opt in to receive a record through electronic transmission from  
3 receiving a record electronically. The licensee shall not provide a  
4 discount or an incentive to any person to opt in to receive electronic  
5 records.

6 (10) The licensee shall verify a person's email address via paper  
7 writing sent by regular mail when more than 12 months have  
8 elapsed since the licensee's last electronic communication.

9 (c) An insurance agent or broker acting under the direction of  
10 a party that enters into a contract by means of an electronic record  
11 or electronic signature shall not be held liable for any deficiency  
12 in the electronic procedures agreed to by the parties under that  
13 contract if all of the following are met:

14 (1) The insurance agent or broker has not engaged in negligent,  
15 reckless, or intentional tortious conduct.

16 (2) The insurance agent or broker was not involved in the  
17 development or establishment of the electronic procedures.

18 (3) The insurance agent or broker did not deviate from the  
19 electronic procedures.

20 (d) Notwithstanding paragraph (4) of subdivision (b) of Section  
21 1633.3 of the Civil Code, for any policy of life insurance, as  
22 defined in Section 101, any statutory requirement for a separate  
23 acknowledgment, signature, or initial, which is not expressly  
24 prohibited by subdivision (c) of Section 1633.3 of the Civil Code,  
25 may be transacted using an electronic signature, or by electronic  
26 transaction, subject to all applicable provisions of this section.

27 (e) The department may suspend a licensee from providing  
28 records by electronic transmission if there is a pattern or practices  
29 that demonstrate the licensee has failed to comply with the  
30 requirements of this section. A licensee may appeal the suspension  
31 and resume its electronic transmission of records upon  
32 communication from the department that the changes the licensee  
33 made to its process or system to comply with the requirements of  
34 this section are satisfactory.

35 (f) This section shall become operative on January 1, 2021.